



# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Operating Fund Negotiated Rulemaking Advisory Committee

8:30 am to 5:30 pm EST, Room B182 HUD Headquarters

### MINUTES OF SECOND SESSION – THIRD DAY

April 15, 2004

1 April 15, 2004 Session:

2

3 The third meeting of the second Negotiated Rulemaking (Neg-Reg) Advisory  
4 Committee session on the Operating Fund Allocation System (the Committee) was called  
5 to order at 8:30 am on Thursday, April 15, 2004, by Mr. Michael Liu, the Assistant  
6 Secretary of Public and Indian Housing. Ms. Tran served as the facilitator. The location  
7 of the meeting was room B182 of the U.S. Department of Housing and Urban  
8 Development; 451 7<sup>th</sup> Street, Washington, DC 20410.

9

10 Committee members in attendance and interests represented were:

No.	Committee Member	Organization
1	Mr. Michael Liu	Assistant Secretary, Public and Indian Housing
2	Mr. William Russell	Deputy Assistant Secretary, Public Housing and Voucher Programs
3	Mr. Steve Nolan	Atlanta Housing Authority
4	Mr. Felix Lam	New York City Housing Authority
5	Mr. Carlos Laboy-Diaz	Puerto Rico Housing Authority
6	Mr. Todd Gomez	Chicago Housing Authority
7	Ms. Ann Lott	Dallas Housing Authority
8	Mr. Larry Loyd	Housing Commission of Anne Arundel County
9	Mr. Rufus Myers	Indianapolis Housing Agency
10	Mr. Steven Longo	Albany Housing Authority
11	Mr. Rick Parker	Athens Housing Authority
12	Mr. Richard Murray	Housing Authority of East Baton Rouge
13	Mr. Michael McInnish	Housing Authority of the City of Montgomery
14	Mr. Willie Martin	Jackson Housing Authority
15	Ms. Deanna Watson	Boise City/Ada County Housing Authority
16	Mr. David Morton	Reno Housing Authority
17	Ms. Ophelia Basgal	Alameda County Housing Authority
18	Ms. Sharon Scudder	Meade County Housing Authority
19	Mr. John Cooper	Massachusetts Union of Public Housing Tenants
20	Ms. Veronica Sledge	Resident Advisory Board/Victory Point RMC
21	Mr. Ned Epstein	Housing Partners, Inc.
22	Mr. Greg Byrne	Harvard Cost Study
23	Mr. Dan Anderson	Bank of America
24	Mr. David Land	Lindsey and Company
25	Ms. Sunia Zatterman	Council of Large Public Housing Authorities (CLPHA)
26	Mr. Sael Ramirez	National Association of Housing and Redevelopment Officials (NAHRO)
27	Mr. Tim Kaiser	Public Housing Authorities Directors Association (PHADA)
28	Mr. Michael Kelly	National Organization of African Americans in Housing (NOAAH)

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**Appendix 1** contains the meeting agenda and attendance listing for the Committee members.

Ms. Tran Can everyone take their seats? A few housekeeping items, you can store your luggage in room B-176. Also, we provided FedEx boxes and labels. We will mail them, but you must provide an account number. HUD will not pay for shipping your boxes. The meeting minutes will be passed out during break, and meeting minutes from the first session will be emailed to you after this session. One last reminder, today is tax day.

**[Appendix 2 was distributed.]**

Mr. Parker The industry is prepared to respond to the Department's proposal that was handed out yesterday. First, I would like to thank the Department for the proposals made, we met for some time last night, we were missing a few members, we met again this morning to make sure we were still in agreement and we brought the missing members up to speed. I believe there is a narrative that is being handed out. We have tried to respond point by point to the Department's proposal. Due to the lateness of the hour, and the caucus this morning, a couple of things are not on the sheet or they have changed just a little since this was typed last night. Rather than taking the time to retype and reprint, we will simply address these items as we come to them.

**I. General Position:**

We agree, subject to the phrase "modified below". When we are finished with the deal, the position will be to agree.

**II. Project Expense Level (PEL) & Project-Based Accounting:**

Part 2, PEL, bullet 1, we will address this as part of the cost sheet at the end. Bullet 2, we agree. Sub-parts 1 and 2 we believe should be clarified through a federal advisory committee process. The definition of project-based is crucial, and will become crucial at the end of this process and it needs to be arrived at jointly. This will play into future issues as we move into our presentation. We continue to agree on sub-bullets 3, 4, 5, and 6.



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#### III. Add-ons:

We agree with bullet 1 as modified by the Department. We agree with bullet 2 as modified by the Department. We agree with bullet 3. For bullet 4, we propose a change of \$4 PUM for PHAs over 250 units for asset management, and \$2 PUM for PHAs under 250 units. We agree with bullet 5, and we agree with bullet 6 at \$2 PUM for IT. And we suggest that since bullets 4 and 6 are regularly occurring costs that they be rolled-up into the PEL. We agree to all the add-ons on the Department's list, but we want to have a brief discussion on PILOT.

#### IV. Utilities:

The Department's current proposal seems to have some problems and it is difficult for us to agree to the proposal because we want to fully understand what is being proposed. We have some alternative options. One is the creation of a utility adjustment fund, another is a three-month lag model so we get an adjustment in the current year. We can talk about this in more depth. Or, the third suggestion is to redefine the legal definition of current year eligibility so that we could pay for current year costs and adjustments under the current appropriations law.

#### V. Formula Income Determination:

We agree to the Department's model on bullet number 2 subject to a few issues. We believe it should be based on the PUM and not on total dollars, we suggest the removal of section B of the HUD form-52723, and an appeal mechanism for PHAs that can demonstrate economic hardship. For example, for a small community where an industry shuts down, the PHA should be able to appeal. Regarding investment income and other income (as defined under 24 CFR 990) we feel that it should not be included in the formula. So, we would preserve the status quo for investment income and it would be the same as the current formula.

#### VI. Transition Policy:

We agree to what was presented with some exceptions: Gainers receive full funding in 2 years at a 50/50 split, losses would stop if a PHA is project-based compliant prior to FY 2006 and losers would only get a 5% loss. We would also like clarification on how PHAs



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1 with less than 250 units will be handled. Because all losses stop with  
2 project-based and this depends on the definition of project-based, we  
3 propose a federal advisory committee to define project-based and  
4 project-based accounting compliance.  
5

#### 6 VII. Appeal Policy:

7  
8 There is one item not on the list. Bullet 1 we believe is self evident,  
9 but we wanted to clarify that all holdback funds not used for the  
10 appeals process be added back into the pot. We agree with bullets 2-9,  
11 but with one change. On bullet 3, what constitutes the threshold for  
12 appeals? We believe there should be some simplified process for  
13 correcting obvious Harvard component errors. For example, where a  
14 PHA's geographic coefficient is wrong, they shouldn't have to go  
15 through an evaluation process for all their projects to fix an obvious  
16 error. We believe there should be a simplified process if there is an  
17 obvious error in the model's calculation. And, we believe that there  
18 should be an addition of the following or similar language: "The  
19 Secretary is authorized/permitted to accept appeals of less than an  
20 entire portfolio for PHAs with over 6,600 units in their portfolio." For  
21 example, for New York, it would be unfair to expect them to pay for  
22 the evaluation of 350 properties. This would be a very complex,  
23 expensive, and difficult process for the PHAs and for the Department  
24 as well to evaluate. Again, this would be at the discretion of the  
25 Secretary.  
26

#### 27 VIII. Implementation of the Final Formula:

28  
29 We agree on the subject of fungibility. However, we would like some  
30 clarification of the definition of fungibility through a FACA (Federal  
31 Advisory Committee Act) process. And we want clarification of how  
32 catastrophic issues, like a major flood, would be addressed. We look  
33 forward to further discussion.  
34

35 Other reforms, on bullet 1 "Simplification," we believe the final report  
36 should state that the mutual goal is to achieve statutory and regulatory  
37 reform over the next 5 years and move closer to the goals of project-  
38 based accounting and management that will place public housing  
39 under similar regulations as FHA. Two other things not on the  
40 bulleted list, and we apologize for that, but it's relatively self evident,  
41 once the funding formula is described, it should be the policy to ask  
42 for the full level under the formula and if the appropriators decide not



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1 to fund at that level, it is their business. And second, how does  
2 memorializing of this happen? Clearly we won't get out by the end of  
3 the day with a rule written. So how we memorialize the process, we're  
4 interested in further discussion about this with our legal counsel.

5  
6 That concludes our narrative, now, moving to the cost sheet. The cost  
7 sheet is what HUD provided at the end of the day yesterday. We will  
8 work off of that. The bottom line number, to make sure we have the  
9 right one, is \$3,837,500 on HUD's cost sheet. Subject to the things  
10 already mentioned in the narrative, we agree to HUD's cost sheet with  
11 the addition of \$5 PUM for the retirement issues we have spoken about  
12 on numerous occasions and which the Assistant Secretary also  
13 mentioned a day or so ago. We believe the total by the Department  
14 with today's narrative and the addition of \$5 PUM for retirement,  
15 which represents the difference between public sector requirements  
16 and the private sector, we believe that is something we can live with.  
17 This could be a separate add-on, or the asset management fee could be  
18 increased, there are a number of strategies to address this. This does  
19 not represent the full-cost of the difference, it is less than the full cost.  
20 Also this is not on the list, this is structural and it occurred to us after  
21 everything was over, we assumed that some inflation factor will be  
22 used to adjust the PEL on an annual basis moving forward with the  
23 implementation of the rule. Unless someone from the industry has  
24 something to add, I believe that this concludes the industry's  
25 presentation. Once again, thanks to the Department for their proposal  
26 yesterday, we believe this moves us closer to an agreement.

27  
28 Mr. Byrne What is the FACA? What are FACA's rules and how does it impact  
29 the ability to issue regulations? I'm not familiar with this.

30  
31 Mr. Liu I would ask counsel here at HUD to explain FACA and its potential  
32 impacts.

33  
34 Mr. Ramirez Before we go into this, as an aside, we asked the facilitator to run a  
35 theoretical model on demolition, this wasn't raised by Mr. Parker, we  
36 want to look at it.

37  
38 Ms. Tran We are working on that.

39  
40 Mr. Pereira FACA establishes a committee to discuss a topic. I think the industry  
41 is recommending we create such a committee. It is very similar to this,  
42 you must establish a charter with GSA, nominate members, and the



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1 committee works similarly to this to determine standards. The  
2 mechanics to set this up, FACA is very prescriptive, you have to file a  
3 charter with GSA and GSA and OMB must review it. HUD would  
4 nominate committee members, there must be a public comment  
5 period—it is a couple of months to set up.  
6

7 Mr. Byrne Does it mandate decision making by consensus?  
8

9 Mr. Pereira It doesn't mandate it, but it can be included.  
10

11 Mr. Epstein Mr. Parker, did you do any costing in terms of this proposal?  
12

13 Mr. Parker No.  
14

15 Ms. Tran Any other points of clarification?  
16

17 **Silence.**  
18

19 Mr. Russell HUD would like to request a half-hour caucus to discuss the industry's  
20 proposal.  
21

22 Ms. Tran Caucus granted, we'll reconvene at 10:40 am.  
23

24 **Caucus was granted at 10:20 am. The committee reconvened at 10:45 am.**  
25

26 Ms. Tran HUD has asked to extend the caucus to 11:15 am.  
27

28 **Extension of caucus granted. The committee reconvened at 11:20 am.**  
29

30 Ms. Tran Excuse me, I would like to make an announcement on behalf of HUD.  
31 They would like to request that the caucus be extended until 12:45 pm.  
32 At that time, HUD will respond to the industry position that was  
33 presented this morning and then HUD would like to ask the  
34 Committee members to be prepared to vote. So if everyone could  
35 please try to return promptly at 12:45 pm. Thank you.  
36

37 **Extension of caucus granted. The committee reconvened at 1:25 pm.**  
38

39 Ms. Tran If everyone could please be seated.  
40

41 **[Appendix 3 was distributed].**  
42





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1 Ms. Sledge Thank you. I would like to summarize some points. First, resident  
2 participation is a separate add-on. I would like to thank HUD for not  
3 allowing the purpose to be broadened at this time. Resident services  
4 are intended to be fully funded at the national level, which is \$130  
5 million. These services are very much needed nationwide. Thank you  
6 for supporting resident services. I do disagree with Mr. Anderson that  
7 the primary purpose of public housing is only bricks and sticks. It has  
8 a strong social component. Public housing is about helping people and  
9 it is about self-sufficiency. There are people with disabilities and the  
10 elderly that need public housing. My third point is in regards to  
11 incentivizing rental income increases. What does that mean? What  
12 are PHAs going to do in response? These incentives would prevent  
13 PHAs from serving the households that need public housing, African  
14 Americans and Hispanics that can't afford the private market. My  
15 fourth point concerns deregulation, especially the industry's last  
16 proposal—item number 10. We had agreed during the first session not  
17 to make any regulatory changes. And finally, my fifth point, what  
18 happens after year three? We would like a definition.

19  
20 Mr. Ramirez For the record, Mr. Secretary, I would like to clarify that the language  
21 on reform is not on the new proposal, item number 10 does not match  
22 up with the item number 10 in the previous proposal. It is not the  
23 intent that the present commitment to resident services be reduced or  
24 any language be modified to reduce the current commitment.

25  
26 Mr. Russell I would like to walk through the document that was just distributed.  
27 (See **Appendix 3. Note: Italicized sections are text that was read**  
28 **verbatim from Appendix 3).**

29  
30 I. General Position:

31  
32 There were no changes made to these provisions, except where it says  
33 "where modified below". [In reference to the following language  
34 "*Adopt a more simplified, transparent, and accurate Operating Fund*  
35 *formula.*"]

36  
37 II. Property Expense Level (PEL) and Project-based Accounting:

- 38  
39 ■ Coefficient - *Add \$2PUM for Public Entity Cost to be included*  
40 *in the PEL.*



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1 It is not written out here but the nonprofit coefficient is still at 10% so  
2 that is unchanged, as agreed to by the industry. We did agree to a \$2  
3 PUM for the public costs related to pension issues.

- 4
- 5
  - Mixed Finance Developments - *Provide a safe harbor for*  
6 *existing, closed, mixed finance deals where the PHA has*  
7 *committed a specific level of operating subsidy.*
- 8

9 Under mixed finance, nothing has changed.

- 10
- 11
  - Project-Based Accounting  
12 *Modify regulatory language to:*
    - 13 ➤ *Include tighter definition and establishment of project and*  
14 *cost centers;*
    - 15 ➤ *Include all accounting transactions (not just revenue and*  
16 *expenses);*
    - 17 ➤ *Require information to be submitted to PIH;*
    - 18 ➤ *Allow PHAs operating fewer than 250 units to treat their*  
19 *entire portfolio as a single property;*
    - 20 ➤ *Allow groups of up to 250 scattered site dwelling units to*  
21 *be treated as a single property; and*
    - 22 ➤ *Establish schedule for implementation to be no later than*  
23 *FFY 2007.*
- 24

25 Nothing under the project-based accounting section has changed. We  
26 will come back to small PHAs, those with less than 250 units.

#### 27 28 III. Add-ons:

##### 29 30 Add-ons outside the PEL:

- 31
  - *Establish audit costs as an Add-on; reduce PEL by existing*  
32 *actual costs.*
  - 33   - *Establish resident participation as an Add-on.*
- 34

##### 35 Eliminate the following Add-ons:

- 36
  - *Cost Attributed to Deprogrammed Units*
  - 37   - *Phase-down funding*
  - 38   - *Long-term vacancies*
- 39

40 For add-ons, nothing on the first page has changed. [In reference to  
41 the above positions].  
42





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#### Create Add-on:

- *Asset Management Fee (\$4PUM for PHAs greater than 250 units; \$2PUM for PHAs under 250 units. PHAs under 250 units must transition to project-based in order to receive the Asset Management Fee).*
- *Asset Repositioning Fee (50% UMA @ PEL for two years)*
- *IT Fee (\$2PUM for all PHAs)*

For the asset management fee, we are willing to accept \$2 PUM for PHAs with less than 250 units, but that is not an automatic. We are offering small PHAs the fee only if they meet the project-based requirements that will be defined. Otherwise, small PHAs are exempted from the requirements so they would not get the fee. It's an either-or situation. The asset repositioning fee is the same as what we had proposed, with the understanding that it would be discussed in further detail in terms of nailing down a date. IT is the same.

#### IV. Utilities:

- *Eliminate existing Utility Adjustment provision. (See attached utility policy example).*
- *Maintain existing mechanisms related to rate and consumption reduction incentives and reduce rate risk; effective FFY 2005.*
- *Codify inclusion of resident-paid utility in energy performance contracts currently processed by waiver; effective FFY 2005.*
- *Provide for a codified benchmarking approach in FFY 2008.*

For utilities, we will eliminate the adjustment provision and refer to the attached utility policy example. I will ask Mr. Kubacki or Mr. Ciancosi to explain this.

Mr. Ciancosi

For the second item you would maintain existing mechanisms for rate and consumption and reduce the rate risk effective FY 2005. If you go to the very last page [of Appendix 3] there is an example of how the process would work for a PHA with a fiscal year end of June 30, 2006. In the example we would use actual data from 6/30/04, compare the actual consumption data to a three-year rolling base (FY 2002, 2001 and 2000) and retain the 75/25 consumption incentive split. We would use actual rates for FY 2004 and fund any changes in unit count for any change from FY 2004 to FY 2006.



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1 Mr. Russell I am going to continue reading the rest of the bullets and with utilities,  
2 we can either stay here and answer questions or come back.

3  
4 We would maintain existing mechanisms related to rate and  
5 consumption reduction incentives and reduce rate risk; effective FFY  
6 2005. And the third bullet is to codify the inclusion of resident-paid  
7 utilities in energy performance contracts currently processed by  
8 waivers. We will provide a codified benchmarking approach to begin  
9 in FY 2008.

#### 10 11 V. Formula Income Determination:

- 12  
13 1. *Use historical rental income revenue and other income as*  
14 *currently defined in Section 990.102 and corresponding*  
15 *historical unit information to derive a PUM.*
- 16 2. *Freeze rental revenue income and other income as described in*  
17 *#1 above, at 2004 level.*
- 18 3. *Eliminate Part B from HUD form 52723.*
- 19 4. *Appeals for severe economic hardship will be permitted (See*  
20 *VII. Appeal #2).*
- 21 5. *Reevaluate formula in three years.*
- 22 6. *Investment income as well as other income not defined in*  
23 *Section 990.102 will not be included in the formula.*

24  
25 We have clarified this section a bit.

#### 26 27 VI. Transition Policy:

- 28  
29 ■ *For PHAs that will realize a loss from the interim Operating*  
30 *Subsidy level to the PEL-derived Operating Subsidy level, such*  
31 *losses will have an annual limit of 5% plus one-fifth of the balance*  
32 *of the difference between the interim Operating Subsidy level and*  
33 *the PEL-derived Operating Subsidy level. Such annual limits will*  
34 *continue for a period of up to 5 years. At 5 years, the full PEL will*  
35 *be realized. Alternatively, if the PHA can demonstrate a successful*  
36 *conversion to project-based management, HUD will discontinue*  
37 *the reduction of subsidy.*

38  
39 For PHAs that realize a loss from the interim subsidy level to the PEL  
40 subsidy level, such losses will have 5% plus one-fifth of the balance of



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the difference between the interim Operating Subsidy level and the PEL-derived Operating Subsidy level.

- *For PHAs that gain from the interim Operating Subsidy level to the PEL-derived Operating Subsidy level, 50% of such gains will be realized in Year 1 and 100% in Year 2.*
- *PHAs of greater than 250 units that do not achieve project-based management by Year 5, will lose their Asset Management Fee. PHAs with less than 250 units that do not participate in Asset Management are exempt from this provision.*

The annual limits would constitute a period of 5 years. At the end of the 5 years the full PEL will be realized. Alternatively if a PHA can demonstrate full conversion to project-based management the loss will be halted. 50% of the gains will be realized in year one and 50% in year two. PHAs over 250 units that do not achieve project-based accounting by year five will lose their asset management fee. PHAs under 250 units that do not participate would be exempted because they don't receive the fee.

- *The initial determination of affected PHAs would be calculated using FY 2004 data.*

The 5% reduction in subsidy will be used based on FY 2004 data.

#### VII. Appeals:

- *Appeals should generally be budget neutral by providing a 2% (i.e. approximately \$72 –\$78 million) hold back of Operating Fund appropriations to fund appeals, particularly appeals within a given fiscal year that has already been budgeted and appropriated for in the given fiscal year. Hold back funds not utilized, and will be added back to the formula.*

Appeals will be budget neutral with a 2% holdback of appropriations for a given fiscal year. Holdbacks that are not used will be added back to the formula.

- *Appeals are voluntary and must cover an entire portfolio (not single properties). The Secretary has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 6,600 units.*



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Appeals must cover the entire portfolio, but the Secretary will accept appeals for very large PHAs for less than the entire portfolio.

▪ *Appeals would fall into four general categories:*

1. Streamlined Appeal. This was recommend by the industry for PHAs that can demonstrate that the application of a specific component of the Harvard model has a blatant and objective flaw.
2. Appeal of Formula Income for Economic Hardship. Once the PHA's rental income revenue and other income are baselined, the PHA can appeal to have the baseline adjusted to reflect severe economic hardship.
3. Appeal for specific local conditions. For specific local conditions because the model is not reliable you will be able to appeal but a variance of 10% or greater must be demonstrated.
4. Appeal to substitute actual project cost data for Harvard project expense level. This is what I have been referring to as opting out of Harvard and substituting the Harvard data for actual project-based accounting data. To qualify a PHA must be operating under true project-based accounting and management for at least two years.

For appeals 3 and 4 the following are required:

- *The appellant would be required to acquire an independent cost assessment of its projects.*
- *The assessment would be reviewed by a professional procured by HUD who is familiar with property management practices and costs in the region or state in which the appealing PHA is located.*
- *The professional review and recommendation would then be forwarded to the Assistant Secretary or his designee for final determination.*
- *If the appeal is granted, the appellant agrees to be bound to the independent cost assessment regardless of new funding levels.*
- *Cost of services for independent cost assessment to be paid by appellant.*
- *PHAs that appeal under #1 and #3, are limited to submit their appeal one year after the publication of the regulation. New projects entering a PHA's inventory would have the right of appeal for one year.*



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VIII. Implementation of Final Formula:

*Simplify and streamline funding mechanism and financial oversight:*

- *Collect all formula characteristics for all PHAs at one time (break the funding cycle based on a PHA fiscal year).*
- *Fund all PHAs based on a calendar year thereby better aligning funding with appropriations.*
- *Reduce PHA reporting burden by using data already collect in HUD's data systems.*
- *Reduce, eliminate, and simplify as many hard-copy forms as possible that are currently associated with the Operating Fund.*

IX. Fungibility:

- *Fungibility between Operating and Capital Funds:* *Fungibility between the Operating and Capital Funds will remain the same as provided by QHWRA.*
- *Fungibility between Projects:*
  - *Until PHAs transition to PBA, subsidy is fully fungible.*
  - *When PBA is established, individual properties will use their specific PEL as their baseline operating budget but excess cash flow is fully fungible. However, PHAs retain fungibility for emergencies.*
  - *No fungibility at the top of the Operating Statement.*

This will remain the same as per the current statue. Until our systems can accommodate project-based formula funding, the system is fully fungible. We will use individual properties' PELs as the baseline for the budget. Again, no fungibility is allowed at the top of the Operating Statement.

X. Clarification of Project-Based:

*HUD will clarify project-based accounting and project-based management in this rule.*

Mr. Liu

I would like to give further clarification on Roman numeral X. In response to requests for FACA, I think that from a practical standpoint under the deadlines for implementation and the deadlines in the appropriations bill, the length of time FACA would take would make it impossible to meet those deadlines. However, given the commitment



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1 and goodwill shown by this group, there is no question in my mind  
2 that we could, in an extended session of this Committee, deal with  
3 those issues. It is our intent to flush out, between now and the next  
4 session, assuming we reach a consensus, and accepting ideas from  
5 members in this room, to create a full draft to be presented at the  
6 follow-up session, so that everyone here will have a chance to  
7 comment and discuss. It is HUD's belief that while warranted, the  
8 concerns about what would go into project-based accounting, what  
9 would be an acceptable methodology, it is HUD's belief that this is  
10 doable in a modest amount of time because, in our opinion, project-  
11 based accounting is not anything new. It's been around. Many of you  
12 have indicated that you do it now. If you have models you want  
13 incorporated, those should be put on the table. We have experience  
14 here from the FHA world and other private sector organizations,  
15 besides yours. So we need to approach this from the idea that it is  
16 doable and not with the idea that we are reinventing the wheel. One  
17 caveat, notwithstanding the protocols, HUD is willing to consider this  
18 if the meeting is outside of Washington for logistical reasons.  
19

#### 20 Several members of the Committee suggest Puerto Rico.

21  
22 Mr. Ramirez In the spirit of cooperation, we could go to Mr. Liu's home state.  
23

24 Mr. Liu I would love nothing better, but it is not in the budget. HUD will pick  
25 up the costs of the members travel. I think that we could hammer this  
26 out in two days with all the prerequisites. You don't need to make a  
27 decision at this moment, but that is our thought behind it.  
28

29 Ms. Tran Any points of clarification?  
30

31 Mr. Parker Thank you. This has been very helpful. I apologize, I was distracted  
32 when the first bullet under Roman numeral II was discussed. The 10%  
33 coefficient is still in, and this is an additional?  
34

#### 35 Several members of the Committee nod yes.

36  
37 Mr. Parker On page 2, section 5, formula income determination, the language in  
38 bullet 1 and bullet 6 is to preserve the existing status quo. Bullet 1, the  
39 inclusion of other income was added, the industry only had it in 6, and  
40 I want to make sure you are meaning it as the status quo.  
41

42 Mr. Russell nods that this is correct.





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1  
2 Mr. Morton I want to commend the Department, they made a tremendous effort  
3 and I am really quite pleased with the outcome, recognizing that we  
4 will never be able to meet all the needs of all of the members. But I do  
5 want to commend them.  
6  
7 Mr. Cooper I want to thank the Department for including resident participation as  
8 an add-on and for acknowledging resident services. We have not had a  
9 chance to look at the impact on residents, the incentives, the open-  
10 ended three years and the deregulation, we may want to write to the  
11 Department for clarification on these points.  
12  
13 Mr. Lam With respect to utilities, it looks very much the same as the original  
14 proposal in the first session except for bullet 5, the unit count. Would  
15 it still be the same situation that a PHA would be reimbursed for actual  
16 expenses 24 months after the fact?  
17  
18 Mr. Kubacki That is correct. The first presentation used “normalized” and we took  
19 that out but we are still in the same place.  
20  
21 Mr. Lam So a PHA would be taking a cash flow risk if there is dramatic change  
22 in utility rates during the two year period when we’re waiting to catch  
23 up with the existing rates instead of receiving an adjustment.  
24  
25 Mr. Russell With general utility fluctuations, I think there are ways for PHAs to  
26 deal with cash flow issues during that period, but we would be willing  
27 to look at, if there is a real energy crisis in our country, we do have  
28 discretion to adjust funding levels for that issue.  
29  
30 Mr. Lam Is this something that the PHA would have to pursue through an  
31 appeals process, or would this be something that HUD would pursue  
32 independently with respect to trends in national energy.  
33  
34 Mr. Russell It could be both. There are emergency appeal mechanisms if there is  
35 some catastrophic local crisis in New York City; there are options you  
36 could pursue. But I was thinking it would be for if there was a  
37 national energy crisis.  
38  
39 Mr. Lam Thank you.  
40  
41 Mr. Nolan On the current form HUD-52722A, it allows for the actual rate in  
42 effect at the time or any known published rate increase issued by the



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1 municipality, and I suggest we change the language to allow for that.  
2 Certain PHAs are faced with increasing rates, in my case I know my  
3 water rates will increase for the next three years, and it would be a  
4 substantial hit on my cash flow if I had to wait to fund this increase.

5  
6 Mr. Kaiser First, I do want to concur with Mr. Morton. A number of us were  
7 commenting at lunch that we sat on the last Neg Reg four to five years  
8 ago, and we were commenting on the marked improvement this Neg  
9 Reg is in terms of cooperation, response to data requests, and level of  
10 professionalism from the HUD staff. You should be very proud of  
11 your staff, they did a great job in a difficult and constraining situation.  
12 With that said, I do think we have a serious issue with the utilities. I  
13 am concerned in terms of the hour with getting an agreement, and I am  
14 aware of that, but we wouldn't be serving our members well if we  
15 didn't try to understand the proposal and maybe consider alternatives  
16 and better ideas to deal with this. I am going to turn this over to my  
17 alternate, Mr. Van Dyke, who has sat down with experts like Mr. Bill  
18 Steinman and Mr. John Comerford. Our concern is not just with cash  
19 flow, but that this proposal could permanently put PHAs in the hole  
20 and I'm sure that is not the intention of this proposal.

21  
22 Mr. Van Dyke I will have to use the flip chart to show you an example (see Exhibit  
23 A). I have gone through this example with HUD staff. The HUD  
24 proposal is basically paying PHAs for a current expense with the price  
25 of that expense two years previously. So you will not be paid fully  
26 and you will always be short. If you have a PHA with a flat  
27 consumption and you need \$1,000,000 for utilities for FY 2006, but  
28 funding is provided based on FY 2004 costs, which if you assume a  
29 modest inflation of 2.5% would be \$950,000, the PHA would be  
30 \$50,000 short, so it would have to get \$50,000 from somewhere else  
31 like reserves. The next year rates have gone up 2.5%, so the PHA  
32 needs \$1,025,000, but HUD provides \$975,000, so again it is \$50,000  
33 short and has to take from reserves. The next year rates go up 2.5%,  
34 the PHA needs \$1,050,000 and HUD is paying \$1,000,000 on data that  
35 is two-years old. The PHA is now \$150,000 short from its reserves.  
36 This will happen every year. It seems a simple fix to use what is going  
37 on now, use the current rate of utilities to pay for the current year.  
38 And that is the proposal we put forward.

39  
40 Exhibit A

41  
42 \$1,000,000 \$950,000



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1		\$1,025,000	\$975,000
2		\$1,050,000	\$1,000,000
3			
4	Mr. Russell	I think what we are definitely open to considering is, let's say Atlanta	
5		had twelve months of real utility cost data, whether June to June or	
6		September to September, then you could submit to HUD the more	
7		recent data. I wouldn't think we would have a problem with that. I	
8		think what we want to avoid is snapshot rates from the month of	
9		January. If you have twelve months of real utility rates then we are	
10		open to that.	
11			
12	Mr. Parker	I will confess that I have been up late and I am struggling to determine	
13		if there is real structural problem with this formula or not. I know it is	
14		not the Department's or anyone in the industry's intention to agree to	
15		anything with a serious structural problem that would result in	
16		bleeding an agency dry if in fact what Mr. VanDyke explained is	
17		correct. Is it possible, since the Department has proposed a follow-up	
18		meeting to agree on the language and the project-based issue, to roll	
19		this into those meetings so we could make sure this really works, do	
20		some modeling so we understand the effect, and come back? I think	
21		the industry has previously gone on record for applauding the	
22		Department for trying to find a way to put adjustments back into the	
23		system that works, is simple, and is not administratively complex for	
24		the Department. I am just concerned about agreeing to something that	
25		may have severe structural flaws without understanding, and I confess	
26		that I don't understand it right now.	
27			
28	Mr. Ramirez	Because the Department has proposed to move everyone to a twelve-	
29		month period where all fiscal years are in-synch, the idea of going to a	
30		twelve-month actual, and I'm not sure what the month is, if we went to	
31		the last twelve-months of the final quarter and used that for the	
32		following year, that might be a possibility. We really do, on the	
33		utilities side, need to see the impact of that. Again, we've been	
34		working numbers for three days straight and like Mr. Parker says, we	
35		have concerns about agreeing without understanding. But if we can	
36		use twelve-months and make requests to Congress based on that, that	
37		sounds like we may be able to capture more readily the spikes or	
38		increases cities like Atlanta may encounter.	
39			
40	Mr. Russell	If the only issue is a timing issue, to simplify, we could take the three-	
41		year rolling base of consumption and apply it to the most recent	



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1 twelve-months of cost data. I don't think there is anything  
2 complicated about this.  
3  
4 Mr. Ramirez That sounds okay.  
5  
6 Mr. Russell If we start funding January to December, and you have data October to  
7 October or November to November, why wouldn't we take it?  
8  
9 Mr. Kaiser I think what you suggested is what we are requesting. Are you  
10 modifying your position?  
11  
12 Mr. Russell Yes.  
13  
14 Ms. Basgal Can I get a clarification on Roman numeral V, bullet one? Instead of  
15 taking a snapshot in time of rental income, historical base means the  
16 prior twelve months?  
17  
18 Mr. Russell We would use the prior twelve months of 2004.  
19  
20 Ms. Basgal Of the calendar year? Does it matter?  
21  
22 Mr. Russell I think the easiest way is to take 2004 rent reported through FASS, for  
23 your fiscal year.  
24  
25 Ms. Basgal So it's your fiscal year. So we report what is charged and what is  
26 collected. Which would you pick up?  
27  
28 Mr. Russell Charged.  
29  
30 Ms. Basgal Would there be any occupancy consideration? Would it be at 97% or  
31 flatlined?  
32  
33 Mr. Lam Section nine, fungibility, this is of a particular importance to New  
34 York, since we have a significant portion of our portfolio that is state  
35 and local not federal. I have a question on fungibility between  
36 projects, the second bullet, third sub-bullet which states no fungibility  
37 at the top of the operating statement. For clarification, would the  
38 Department consider the language "No fungibility at the top of the  
39 operating statement except as may exist in the ACC between HUD and  
40 the PHA"?  
41



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- 1 Mr. Russell HUD is aware of NYCHA's concerns around the ACC. We have  
2 requested and received a copy, and will have it evaluated by our  
3 counsel, but we can not agree to that at this time.  
4
- 5 Mr. Lam Do you think we could get a resolution in terms of counsel review  
6 before the end of this Neg Reg?  
7
- 8 Mr. Russell We will not have an answer by the end of today.  
9
- 10 Mr. Ramirez. When you review the ACC and we meet again for the two-day session,  
11 could this item remain open as a point of discussion as we vote on the  
12 final rule?  
13
- 14 Mr. Russell Yes.  
15
- 16 Mr. Kaiser I'm sorry, I don't want to belabor this point but this is a critically  
17 important issue and I want to have it as well understood as possible.  
18 Mr. Russell, back on utilities, can you please state clearly for the  
19 record what your modified utilities proposal is so we can understand?  
20 I know we want to move on, but this is about one-third of the  
21 Operating Fund.  
22
- 23 Mr. Russell We're working on something.  
24
- 25 Mr. Land If we could change horses. Can we get a clarification on small PHAs?  
26 It is my understanding for small PHAs to receive the asset  
27 management fee, they would have to commit to project-based  
28 budgeting. My concern is that if there is a PHA with 250 units or less  
29 that opts not to do project-based, do they still lose their PEL? If I have  
30 a small PHA with a loss on PEL, would they be funded on that?  
31
- 32 Mr. Russell They would be subject to the five-year PEL transition.  
33
- 34 Mr. Land If a PHA opts not to do project-based, is the PHA considered in  
35 compliance?  
36
- 37 **Mr. Russell shakes his head no.**  
38
- 39 Mr. Land So in order to be limited, they must commit to project-based.  
40
- 41 Mr. Russell Yes. They must commit to project-based. They have a choice. They  
42 are exempted from the requirements and can go about their way, and



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1                   they can always appeal through regular procedures. Or, they can  
2                   comply with the project-based requirements and be eligible for the \$2  
3                   PUM asset management fee and say I've met the project-based  
4                   requirements and my PEL is adjusted from that point.  
5  
6       Mr. Parker       On transition – I have a few questions. Maybe it was Mr. Longo that  
7                   asked yesterday if you make yourself compliant prior to the first year  
8                   of phasedown, what would be the effect on the PHA? Would there be  
9                   no loss or a 5% loss? That was a question asked yesterday and I am  
10                  unclear.  
11  
12       Mr. Russell     I want to clarify. If a PHA goes through the 5-year transition and says  
13                   that I've achieved project-based accounting, it would not simply be  
14                   saying that I have done this pro forma, it would be that they have  
15                   complied with the requirements and a state expert would review and  
16                   confirm this.  
17  
18       Mr. Parker     I understand that. But if they are able to do that before, what happens  
19                   to them?  
20  
21       Mr. Russell     We would stop it at the 5% loss.  
22  
23       Mr. Parker     So 5% would be all.  
24  
25       Mr. Ramirez     So for project-based accounting, we will include some language about  
26                   getting together again. But I am curious about why you deleted the  
27                   language about regulatory reforms and the language about not  
28                   impacting the resident programs that are currently in effect?  
29  
30       Mr. Liu         Basically for expediency. There could be various interpretations of the  
31                   words that we use and those issues are not directly involved with the  
32                   formula itself. That was the main reason, so we can focus our energies  
33                   on what we do here. Many are already implied in the rule. It makes  
34                   sense to remove ourselves from the debate, rather than having others  
35                   second guess what we meant or read between the lines.  
36  
37       Mr. Kelly       On the issues of regulatory relief and reforms as it relates to resident  
38                   services, and I hear you in terms of clarifying, but while we embrace  
39                   Harvard, it says that we have to separate ourselves from our  
40                   responsibilities and focus on asset management. I think it is important  
41                   to include some statements about intent, we need to keep the door  
42                   open within the framework of Operating Subsidy. PHAs have to





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1 marry with Labor or Justice to create critically needed resources, this  
2 may be something we need to clarify in the next deliberations when we  
3 talk about project-based. There are resident services, public safety and  
4 direction, so I would at least like to hold the opportunity and reserve  
5 the right to revisit this.  
6  
7 Mr. Ramirez Just to get clarification, on page four of the appeal process, the last  
8 bullet, under one or three you're limited to one year. But on new  
9 projects entering a PHA's inventory, would you have the right to  
10 appeal for one year as of full occupancy? One year when?  
11  
12 Mr. Russell The DOFA date.  
13  
14 Mr. Ramirez I have two more points. Page three, item two. Will we be defining  
15 severe economic hardship so there is clarity as to what triggers the  
16 appeal for severe economic hardship? Or will that be wide-open  
17 subject to your own interpretation?  
18  
19 Mr. Liu We feel this should be left open at this point.  
20  
21 Mr. Ramirez I'm not suggesting we define it today, but will we define this in the  
22 next session?  
23  
24 Mr. Liu We will provide a definition in the next session and we can go over it.  
25  
26 Mr. Ramirez On page two, add-ons, the asset repositioning fee, I had asked for a  
27 data run, but I was told that the dollars are a moving target and it  
28 would be a theoretical run. But what is the rationale of dropping the  
29 existing method which is pretty clean—100, 66, 33%—and just going  
30 on repositioning of 50% for two years. Can I get some clarification?  
31  
32 Mr. Liu Our initial opening position did not include this. We have strong  
33 reservations, and some could question despite the arguments made  
34 here, there are still ongoing questions for continued subsidy for vacant  
35 units. On the other hand, we were swayed by the arguments made  
36 here that there should be some factor. To the extent we are willing to  
37 agree, this is a representation of our agreement.  
38  
39 Mr. Ramirez I applaud the Department as well for recognizing that there is the need  
40 for some sort of assistance for the repositioning of the housing stock.  
41 But I counter by saying that the current model is an easy model to  
42 trend out and leverage repositioning of a property. As currently



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1 proposed, which is better than it was before, there is still somewhat of  
2 a disincentive to make sure a property moves from one end to another.  
3  
4 Mr. Gomez I have two questions. One, there are clear incentives for those who  
5 lose funding and small PHAs with less than 250 units to move towards  
6 project-based. Is it HUD's intent that during the five-year transition  
7 that everyone will convert to project-based accounting and  
8 management? Or only the losers? In this, there is no timeline for  
9 conversion for the industry.  
10  
11 Mr. Liu nods yes.  
12  
13 Mr. Russell To answer, everyone would be converting and we would begin doing  
14 this when our systems are set up to accommodate project-by-project  
15 financials. We state that all would have to be there by year five to  
16 retain the asset management fee.  
17  
18 Mr. Gomez And my next question is that I had asked for some written guidance on  
19 how MTW agencies would be impacted by this rule, would you have  
20 this sometime soon or at least by the next session?  
21  
22 Mr. Liu As a general statement, because everyone has a slightly different  
23 MTW agreement, we intend to honor those MTW agreements because  
24 our General Counsel will not want to travel all over the country having  
25 to address this. So we will have language that will incorporate that.  
26  
27 Ms. Scudder Thank you for all the consideration you have given small PHAs,  
28 changing the requirements to 250. I would like to invite everyone to  
29 Sturgis for the next session so you can see how small rural PHAs  
30 operate. I guarantee your hotel would be affordable.  
31  
32 Ms. Zatterman Two questions. First, we have not talked about the overall funding  
33 process and how estimating would work for this model. Do you take  
34 the PEL and roll it up and then add the add-ons? We did have earlier  
35 language, but I think it would be helpful if we have clarifying  
36 language, whatever the process is, because we agreed it is important  
37 for all parties to have a transparent policy in estimating the budget  
38 request. Second, I wanted to follow-up on the asset repositioning fee.  
39 We asked for an additional run because we wanted to make this as  
40 simple as possible. PHAs need a transition fee, and the three-year  
41 phase-down has provided this but was difficult to do for HUD. One  
42 option is to roll the amount into the PEL so we are not calculating it



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1 separately. Without having the impact of the assessment, in your  
2 proposal you are essentially providing one year of transition subsidy.  
3 This is a key priority for PHAs that are repositioning their portfolio  
4 and for Congress and HUD to ensure that the portfolio improves. I am  
5 assuming there will be a caucus at some point to respond to HUD's  
6 proposal, and there are some unanswered questions. Can we do some  
7 language for our next session in terms of estimating?  
8  
9 Mr. Russell I think you are asking for clarification on how the actual formula will  
10 work and what it will look like.  
11  
12 Ms. Zatterman I have a macro and a micro concern. I want PHAs to understand how  
13 this is calculated for individual subsidy, but also how to get the  
14 aggregate number for the basis of HUD's budget request. My concern  
15 is on the aggregate level, how you get to the budget request for  
16 Congress.  
17  
18 Mr. Liu We can go as far as to present examples of how hypothetical PHAs  
19 may proceeded to try to estimate their subsidy. But in terms of the  
20 aggregate issue, I will say flat out the answer is no because there are  
21 other factors that go into the budget process and that is an  
22 administrative and executive prerogative that is not appropriate for this  
23 Neg Reg.  
24  
25 Ms. Zatterman I'll leave it at that except to say that all our negotiations are premised  
26 on the fact that HUD will ask for a sufficient appropriation amount,  
27 and that is our concern.  
28  
29 Mr. Nolan To follow up on asset repositioning, I still have many questions on  
30 timing and how this is going to work. So in addition to a small group  
31 discussion on project-based accounting and project-based budgeting,  
32 can we also have a small group discussion on this?  
33  
34 Mr. Ramirez It's the same group of all of us.  
35  
36 Mr. Nolan The other issue is when the funding runs short, at what point will the  
37 proration be applied? Before or after the add-ons?  
38  
39 Mr. Russell Proration is inclusive of the entire formula mechanism, including add-  
40 ons, which is what has been done historically.  
41



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- 1 Mr. Nolan My last point, on the first page, bullet two, the \$2 add-on for public-  
2 entity cost. The Harvard Study did an adjustment for PHAs that hit the  
3 \$325 PEL mark. Is the \$2 adjustment made before or after that  
4 adjustment?  
5
- 6 Mr. Byrne Mr. Nolan, since it is calculated on a per unit basis, it would not make  
7 a difference. It is not based on PEL. It doesn't matter if the PEL is at  
8 \$325 or \$350, the Department says it will give you \$2 per unit so the  
9 cap does not affect that.  
10
- 11 Mr. Anderson I would like clarification on two portions. Section five, part two, you  
12 freeze rental income at the FY 2004 level. In section eight,  
13 implementation, there is a term "agency rent". Is that the frozen rent?  
14
- 15 Mr. Russell Yes, it is the frozen PUM.  
16
- 17 Mr. Anderson I see the beneficial results of using a constant number for rent to the  
18 extent PHAs pursue a rent setting policy higher than the frozen  
19 number. However, on the other hand, to the extent they don't and you  
20 operate in an inflationary cost environment, it sets the Department up  
21 to fund a declining level of local effort, and if that is a conscious  
22 decision it is okay, but it struck me as a disconnect to the previous  
23 discussion.  
24
- 25 Mr. Liu Could you elaborate?  
26
- 27 Mr. Anderson In a rising general cost environment, year-after-year the agency PEL  
28 will be higher. If the PHA rent is frozen at a fixed point, there will be  
29 no balance between PEL and agency rent, and tenant rent will be a  
30 declining fraction of the total.  
31
- 32 Mr. Liu Your example is premised on certain assumptions. There are other  
33 factors that will mitigate against that happening, for example the  
34 incentive to move towards project-based accounting, otherwise some  
35 bad things happen at the end of those five years. This is a very time-  
36 certain process we are discussing. At the end of that period, with the  
37 overall requirement to move toward project-based, we are looking at  
38 real costs and the ability to fund PHAs for real costs. It's fair to raise  
39 that question, and we did take it into consideration. There are  
40 imperfections in this, there are overall incentives to move in a certain  
41 direction, but there could be possible disincentives. But given other  
42 larger mitigating factors, in this environment PHAs would want to



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1 increase rental or other income. Overall, this is still a balanced  
2 approach and worth the risks that you have pointed out.  
3  
4 Mr. McInnish I have two quick questions, then I think we're to a point of having a  
5 brief caucus then I think we're ready to vote. There are two items  
6 mentioned this morning that I haven't heard addressed. One, will  
7 some sort of inflation be applied to the PEL each year? I assume it is  
8 not a stagnant number that never changes. FHA changes over time as  
9 does the current AEL. Two, someone mentioned taking those items  
10 that are fixed PUMs—IT, asset management, pension fee—and rolling  
11 them into the PEL rather than having a million add-ons at the end. I  
12 wondered the Department's position on this.  
13  
14 Mr. Liu On the roll-up issue, HUD feels that it is clearer for the budgeting  
15 process to keep them as add-ons for transparency. Per the inflation  
16 factor, HUD does not agree to that. We believe historically there is a  
17 track record in the overall budgeting process that inflation factors are  
18 applied, but that is part of the executive and administration budgeting  
19 process, we do not agree it should be put into the rule.  
20  
21 Mr. Parker As a point of clarification, is the issue formalizing an inflation factor  
22 in the language or is the issue applying an inflation factor at all? Is  
23 the intention to apply a factor but not memorialize some specific  
24 percent, or is it the intention not to inflate the numbers over the next  
25 four or five years?  
26  
27 Mr. Liu Our position is not to address this issue because it is the function of the  
28 executive budgeting process. You can look at the historical methods  
29 used and some inflation factors have been placed into the budget, but  
30 we believe it is part of the executive budgetary process in the end, and  
31 we are not willing to enunciate on this in the rule.  
32  
33 Ms. Tran I want to remind everyone it is almost 3 pm. Some members need to  
34 leave early.  
35  
36 Mr. McInnish As a point of clarification, do we need to receive public comments? I  
37 am ready to move to a vote subject to a caucus. Should we have  
38 public comment before the caucus?  
39  
40 Ms. Tran If members of the public would like to address the Committee please  
41 come forward.  
42



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Operating Fund Negotiated Rulemaking Advisory Committee**

8:30 am to 5:30 pm EST, Room B182 HUD Headquarters

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**The session is opened to public comment.**

**Mr. Wayne Sherwood comes forward.**

Mr. Sherwood Since we are not supposed to ask questions, my comment is I heard earlier the rulemaking would wrap up then I heard there would be another session. If there is going to be another session, I don't understand if this is another session that is open to the public as a whole and what the voting will be, that's my comment.

**Mr. Allen Cornell from the Texas Housing Association comes forward.**

Mr. Cornell I want to commend the Committee for addressing the needs of small PHAs. The asset management fee is important for us and the numbers are significant to the overall budget. Thanks to the Department and the Committee.

Ms. Tran Are there other comments?

**No one else comes forward.**

Mr. Kaiser One quick question for Mr. Russell, you stated that the coefficient will remain at 10%. Is that correct?

Mr. Russell Yes.

Mr. Kaiser And the Department will have a more specific proposal on utilities when we come back.

Mr. Liu Subject to an actual draft being put in place. Yes, we will have better clarification, but until we have a final draft in place, we will not be held to every single word stated.

Mr. Kaiser But you will have some clarification.

Mr. Liu Yes.

Ms. Tran How long do you need for the caucus?

Mr. Kaiser Ten minutes.

**Ten-minute caucus granted. The committee reconvened at 3:30 pm.**





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1  
2 Ms. Tran Can everyone please take their seats. Mr. Parker.

3  
4 Mr. Parker Thank you. The industry has a proposed resolution we would like to  
5 be considered. We have not had a chance to type this up and have it  
6 printed out, obviously. We resolve that the Committee approve the  
7 outline of the Department's proposal concerning the Public Housing  
8 Operating Fund Formula, subject to the following:  
9

- 10 1. Mutual agreement on provisions for utility adjustments.
- 11 2. Resolution of the New York City Housing Authority's fungibility
- 12 to use Operating Subsidy for certain state units as provided in its
- 13 ACC.
- 14 3. Reconvening for an additional two-day session of the Committee
- 15 to consider definitions and other issues related to project-based
- 16 accounting and management, and threshold criteria and agreement
- 17 on these matters.
- 18 4. Resolution of outstanding issues relating to asset repositioning.
- 19 5. Incorporation of a reasonable annual inflation factor to be applied
- 20 to the PEL.
- 21 6. Final approval must later be given to the specific rule language.
- 22

23 I would place that into consideration as a motion, and with an  
24 understanding that obviously those matters that have been clarified  
25 here around the table as we discussed the Department's proposal  
26 would also of course be incorporated into that final rule language as  
27 we have outlined here this afternoon.  
28

29 Mr. Kelly I second that motion.

30  
31 Mr. Morton I did not understand were we saying we had to reach agreement on  
32 these issues? That's stronger than I thought.  
33

34 Mr. Parker The choice of wording was crafted with the help of our legal counsel.  
35 This was just for item three, project-based accounting and threshold  
36 criteria.  
37

38 Mr. Morton That's okay then.

39  
40 Mr. Russell Mr. Parker, could you restate the answer.  
41



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- 1 Mr. Parker The only one that specifically refers to...actually, that's not true, there  
2 must be mutual agreement for utility adjustments, and for project-  
3 based accounting and management and threshold criteria, which is  
4 item number three. Could I allow Mr. Bill Mayer to explain or  
5 amplify what I just said?  
6
- 7 Mr. Mayer Our intention was to reflect the realities of the situation, major issues  
8 are outstanding and we won't be able to have a complete proposed rule  
9 unless we have understanding on those issues, it is not really a  
10 technical matter.  
11
- 12 Mr. Russell Are we voting to agree on everything but these items you mentioned  
13 here, or everything agreed upon here-to-fore is contingent on  
14 everything that is finally agreed upon at the end of the next Neg Reg  
15 session?  
16
- 17 Mr. Parker The intent of the industry upon future meeting is to discuss the issues  
18 outlined and lock in place what has been agreed to. If this blew up on  
19 every single issue, the Department would be free not to agree to a final  
20 rule, which is the same for others around the table. But it is not the  
21 point of the industry to go back and revisit topics. I believe we have  
22 agreement on everything except what I outlined. Does that explain?  
23
- 24 Ms. Tran Can I summarize the agreement?  
25
- 26 Ms. Sledge At this time, I would like to state my position as a resident  
27 representative. I'd like to sustain my vote until I have further  
28 clarification and understanding on many items I do not understand.  
29
- 30 Ms. Tran If we are ready to go to vote, I will summarize Mr. Parker's position.  
31 If you take HUD's position on general agreement, all those items are  
32 in agreement except for...  
33
- 34 Mr. Ramirez Can't we take what was stated by Mr. Parker and confirmed by Mr.  
35 Russell verbatim instead of paraphrasing it one more time? I don't  
36 want to get into we agree to disagree to agree. I think we are all clear  
37 as to what the motion is. It's on the record. We are clear as to what  
38 we are going to vote on and that is just my suggestion.  
39
- 40 Ms. Tran Let's go to vote. Consensus is two-thirds majority, that's 21 out of 28  
41 with HUD in the 21. Everyone raise their hands and hold them up so  
42 we can count.



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1  
2 Mr. Morton I'm not clear on what we're voting on. Can you re-read the motion?  
3  
4 Ms. Tran Here are the areas under discussion. The first has to do with the utility  
5 provision that will still be part of the next session discussion. The  
6 second item is resolution of the New York City Housing Authority's  
7 ACC agreement. Third is in the next session, the Committee will  
8 discuss project-based accounting and management and establish a  
9 threshold criteria. Fourth is to discuss an asset-repositioning fee. Fifth  
10 is a local inflation factor to be used on the PEL. Sixth is the  
11 Committee would like to review the language on the final rule. Did I  
12 summarize those items that will be excluded correctly?  
13  
14 Mr. Cooper We're still in the discussion period on the motion. Has there been a  
15 second?  
16  
17 Ms. Tran Yes, we're about to have a vote.  
18  
19 Mr. Cooper I have a question, and I need to know if it is appropriate to ask at this  
20 time.  
21  
22 Ms. Tran Go ahead and ask.  
23  
24 Mr. Cooper I wanted to be sure in the discussion of the PEL, which was the last  
25 statement made, that Ms. Sledge had said she has some questions  
26 because she wants to understand the impact on residents. This is not to  
27 say we are opposing, just that we want to make sure when we meet  
28 again, that there will be questions on how much it will cost residents  
29 on the PEL.  
30  
31 Ms. Tran We have received some data requests from the Committee for a run  
32 based on FY 2004 data for the agreements made today. This will be  
33 provided before the third session.  
34  
35 Mr. Ramirez Again, the motion made by Mr. Parker and confirmed by Mr. Russell  
36 will be adhered to verbatim and adopted as stated and not in summary  
37 form.  
38  
39 Ms. Sledge I was just going to ditto what Mr. Cooper said. Everyone needs to  
40 know I am not refraining from the proposal, but some things need to  
41 be clarified because of the impact on residents. I'm the person people  
42 will write letters to.



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- 1  
2 Mr. Morton I would move on the motion and vote.  
3  
4 Mr. Lam Because we are relying on the written record, when Mr. Parker made  
5 the motion he mentioned the New York City Housing Authority's state  
6 developments, and I think he meant both state and city developments  
7 in the motion.  
8  
9 Ms. Tran You are saying the New York City Housing Authority's state and local  
10 developments.  
11  
12 Mr. Parker As the maker of the motion, I accept that.  
13  
14 Mr. Liu Although there are a lot of ramifications, out of respect to Ms. Sledge,  
15 I think it is important we take a step back and all communicate. In  
16 looking at the Public Housing Operating Cost Study almost as a  
17 baseline since consensus was generally to work from there, there is an  
18 additional \$230 million provided for PHAs in the aggregate. Certainly  
19 some do not gain as much as others and some do lose, but that should  
20 give, in the aggregate, a clear baseline to begin with. The Harvard  
21 Operating Cost Model, as it relates to the FY 2004 appropriation and  
22 the FY 2005 appropriation, it does provide significantly more dollars.  
23 Hopefully that will help to assuage some of the concerns, though  
24 certainly there will be questions from residents around the country. So  
25 thank you for your question.  
26  
27 Mr. Ramirez Not to belabor this, but to reinforce what the Assistant Secretary  
28 stated, the baseline is as of the most recent year we would be adopting,  
29 which in this case would be FY 2004. And again, I would like to  
30 reiterate Mr. Morton's call to move on the motion.  
31  
32 Ms. Tran Can we move on HUD's position except for those items Mr. Parker  
33 referred to? Again 21 out of 28 must agree.  
34  
35 **23 hands are raised.**  
36  
37 Ms. Tran We have 23 of 28 votes, the motion passes.  
38  
39 **The motion passed. Clapping.**  
40  
41 Mr. Liu To fill in the blanks about a future meeting, certainly we have to go to  
42 the calendar and find a time period as soon as possible, though I don't



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1 anticipate this happening until sometime in May. We hope to do it as  
2 soon in May as possible, but it will certainly be no later than May.  
3 We'll have to make it pretty soon because there must be a fifteen-day  
4 notice to the public, giving the location, time and place. Based on our  
5 informal agreement it may not be in Washington, but we will have that  
6 published too. We appreciate all that has been done. Our intention is  
7 to have a fully fleshed out, detailed document to look at relative to  
8 those items we have agreed to. Hopefully, we can make progress  
9 between now and then, as many of you who would like to can discuss  
10 the points with us where we do not have items of consensus. If we are  
11 successful, we hope we can deal with the substance as well as the  
12 language at the next session.  
13  
14 Mr. Parker Once again, thank you Mr. Liu, Mr. Russell, Mr. Kubacki, and the  
15 entire rest of the team. Thank you to the note-takers, the folks  
16 crunching the data. In terms of when the next meeting is likely to  
17 occur, I suggest you coordinate with the professional associations  
18 because my own professional association will be meeting in May and  
19 it will be a problem if we schedule on top of the PHADA Annual  
20 Conference. Once again, thank you very much.  
21  
22 Ms. Tran With that, we are adjourned. Mr. Parker, Mr. Kaiser, Ms. Zaterman,  
23 if you could stick around for a little bit.  
24



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**List of Appendices for the April 15, 2004 Session:**

1. Sign-in sheet for committee members, guests of committee members and members of the public.
2. Response to HUD position for Final Operating Fund Formula (Industry Groups).
3. U.S. Department of Housing and Urban Development Position for Final Operating Fund Formula as of April 15, 2004 12:45 pm (HUD).
4. Utilities Summary Sheet (HUD).





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**Second Session: Consensus Agreement**

**RESOLVED** that the Committee approves the attached outline of the Department's negotiated position concerning the public housing operating formula subject to the following items:

1. Mutual agreement on a provision for utilities adjustments.
2. Resolution of the New York City Housing Authority fungibility to use operating subsidy for certain state and city units as provided in its Annual Contribution Contract (ACC).
3. The convening of an additional 2-day session on the Committee to consider definitions and other issues relating to project-based accounting and management principles and threshold criteria, and agreement on those matters.
4. Resolution of outstanding issues relating to asset repositioning.
5. Incorporation of a reasonable annual inflation factor to be applied to the PEL.
6. Further, it is understood that final approval must later be given to specific rule language.

**See Attachment: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, POSITION FOR FINAL OPERATING FUND FORMULA -- As Presented to the Committee on April 15<sup>th</sup>, 2004; 12:45PM**



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1  
2 **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
3 **POSITION FOR FINAL OPERATING FUND FORMULA**  
4 **As Presented to the Committee on April 15<sup>th</sup>, 2004; 12:45PM**  
5  
6  
7

8 **I. General Position**  
9

- 10 • Adopt Harvard's methodology in calculating project expense level except where  
11 modified below.  
12 • Adopt a more simplified, transparent, and accurate Operating Fund formula.  
13

14  
15 **II. Project Expense Level (PEL) & Project-based Accounting**  
16

- 17 • Coefficient  
18 Add \$2PUM for Public Entity Cost to be included in the PEL.  
19  
20 • Mixed Finance Developments  
21 Provide a safe harbor for existing, closed mixed finance deals where the PHA has  
22 committed a specific level of operating subsidy. PHA will receive the higher of  
23 the Harvard PEL or the current AEL for that property.  
24  
25 • Project-Based Accounting  
26 Modify regulatory language to:  
27 ➤ Include tighter definition and establishment of project and cost centers;  
28 ➤ Include all accounting transactions (not just revenue and expenses);  
29 ➤ Require information to be submitted to PIH;  
30 ➤ Allow PHAs operating fewer than 250 units to treat their entire portfolio as a  
31 single property;  
32 ➤ Allow groups of up to 250 scattered site dwelling units to be treated as a  
33 single property; and  
34 ➤ Establish schedule for implementation to be no later than FFY 2007.  
35

36  
37 **III. Add-ons**  
38

- 39 Add-ons outside the PEL  
40 • Establish audit costs as an Add-on; reduce PEL by existing actual costs.  
41 • Establish resident participation as an Add-on.



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1        Eliminate the following Add-ons:

- 2        • Cost Attributed to Deprogrammed Units  
3        • Phase-down funding  
4        • Long-term Vacancies  
5

6        Create Add-on

- 7        • Asset Management Fee (\$4PUM for PHAs greater than 250 units; \$2PUM for  
8        PHAs under 250 units. PHAs under 250 units must transition to project-based in  
9        order to receive the Asset Management Fee).  
10       • Asset Repositioning Fee (50% UMA @ PEL for two years)  
11       • IT Fee (\$2PUM for all PHAs)  
12

13       For clarification, the following items are proposed as Add-ons outside of the PEL:

- 14       • Audit Cost  
15       • Resident participation  
16       • Asset Management Fee  
17       • Asset Repositioning Fee  
18       • IT Fee  
19       • EDSC  
20       • Energy (loan amortization)  
21       • PILOT  
22  
23

#### 24       **IV. Utilities**

- 25  
26       • Eliminate existing Utility Adjustment provision. (See attached utility policy  
27       example).  
28       • **Maintain existing mechanisms related to rate and consumption reduction**  
29       **incentives and reduce rate risk; effective FFY 2005.**  
30       • Codify inclusion of resident-paid utility in energy performance contracts currently  
31       processed by waiver; effective FFY 2005.  
32       • Provide for a codified benchmarking approach in FY 08.  
33  
34

#### 35       **V. Formula Income Determination**

- 36  
37       1.       Use historical rental income revenue and other income as currently defined in  
38       Section 990.102 and corresponding historical unit information to derive a PUM.  
39       2.       Freeze rental revenue income and other income as described in #1 above, at 2004  
40       level.



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- 1 3. Eliminate Part B from HUD form 52723.
- 2 4. Appeals for severe economic hardship will be permitted (See VII. Appeal #2).
- 3 5. Reevaluate formula in three years.
- 4 6. Investment income as well as other income not defined in Section 990.102 will
- 5 not be included in the formula.
- 6
- 7

#### **VI. Transition Policy**

- 10 • For PHAs that will realize a loss from the interim Operating Subsidy level to the
- 11 PEL-derived Operating Subsidy level, such losses will have an annual limit of 5%
- 12 plus one-fifth of the balance of the difference between the interim Operating
- 13 Subsidy level and the PEL-derived Operating Subsidy level. Such annual limits
- 14 will continue for a period of up to 5 years. At 5 years, the full PEL will be
- 15 realized. Alternatively, if the PHA can demonstrate a successful conversion to
- 16 project-based management, HUD will discontinue the reduction of subsidy.
- 17 • For PHAs that gain from the interim Operating Subsidy level to the PEL-derived
- 18 Operating Subsidy level, 50% of such gains will be realized in Year 1 and 100%
- 19 in Year 2.
- 20 • PHAs of greater than 250 units that do not achieve project-based management by
- 21 Year 5, will lose their Asset Management Fee. PHAs with less than 250 units that
- 22 do not participate in Asset Management are exempt from this provision.
- 23 • The initial determination of affected PHAs would be calculated using 2004 data.
- 24
- 25

#### **VII. Appeal Policy**

- 28 • Appeals should generally be budget neutral by providing a 2% (i.e. approximately
- 29 \$72 –\$78 million) hold back of Operating Fund appropriations to fund appeals,
- 30 particularly appeals within a given fiscal year that has already been budgeted and
- 31 appropriated for in the given fiscal year. Hold back funds not utilized, will be
- 32 added back to the formula.
- 33 • Appeals are voluntary and must cover an entire portfolio (not single properties).
- 34 The Secretary has the discretion to accept appeals of less than an entire portfolio
- 35 for PHAs with greater than 6,600 units.
- 36 • Appeals would fall into four general categories:
- 37
- 38 ➤ #1: Streamlined Appeal. Appeal to demonstrate that the application of a
- 39 specific Harvard model component has a blatant and objective flaw.



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- 1 ➤ #2: Appeal of Formula Income for Economic Hardship. Once the PHA's  
2 rental income revenue and other income are baselined, the PHA can appeal to  
3 have the baseline adjusted to reflect severe economic hardship.  
4 ➤ #3: Appeal for specific local conditions. Appeals based on demonstrations  
5 that the model's predictions are not reliable because of specific local  
6 conditions; to be eligible a variance of 10% or greater must be demonstrated.  
7 ➤ #4: Appeal to substitute actual project cost data for Harvard project expense  
8 level. The PHA has to operate under a true PB management for at least 2  
9 years and that legitimate cost data by property can be verified).

10  
11 For appeal under #3 and #4, the following are the requirements:

- 12 • Appellant would be required to acquire an independent cost  
13 assessment of its projects.  
14 • The assessment would be reviewed by a professional procured by  
15 HUD who is familiar with property management practices and costs in  
16 the region or state the appealing PHA is located.  
17 • The professional review and recommendation would then be  
18 forwarded to the Assistant Secretary or his designee for final  
19 determination.  
20 • If appeal is granted, appellant agrees to be bound to the independent  
21 cost assessment regardless of new funding levels.  
22 • Cost of services for independent cost assessment to be paid by  
23 appellant.  
24 • PHAs that appeal under #1 and #3, are limited to one year after the  
25 publication of the regulation to submit their appeal. New projects  
26 entering a PHA's inventory would have of right of appeal for one year.

#### 27 28 29 **VIII. Implementation of Final Formula**

30  
31 Simplify and streamline funding mechanism and financial oversight:

- 32  
33 • Collect all formula characteristics for all PHAs at one time (break the funding  
34 cycle based on a PHA fiscal year).  
35 • Fund all PHAs based on a calendar year thereby better aligning funding with  
36 appropriations.  
37 • Reduce PHA reporting burden by using data already collect in HUD's data  
38 systems.  
39 • Reduce, eliminate, and simplify as many hard-copy forms as possible that are  
40 currently associated with the Operating Fund.  
41



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Overall goal is have PIH systems overtime calculate Operating Subsidy. Initial calculation will look similar to current formula (agency-wide).

$(\text{Agency PEL} + \text{Agency UEL} - \text{Agency Rent}) \times \text{Agency UMAs} + \text{Agency Add-ons} = \text{Subsidy}$

But over-time as systems are enhanced the formula will be calculate more specifically at a project level

$(\text{Project}_1 \text{ PEL} + \text{Project}_1 \text{ UEL} - \text{Project}_1 \text{ Rent}) \times \text{Project}_1 \text{ UMA} + \text{Project}_1 \text{ Add-Ons} = \text{Project}_1 \text{ Sub}$

$(\text{Project}_2 \text{ PEL} + \text{Project}_2 \text{ UEL} - \text{Project}_2 \text{ Rent}) \times \text{Project}_2 \text{ UMA} + \text{Project}_2 \text{ Add-Ons} = \text{Project}_2 \text{ Sub}$



$(\text{Project}_n \text{ PEL} + \text{Project}_n \text{ UEL} - \text{Project}_n \text{ Rent}) \times \text{Project}_n \text{ UMA} + \text{Project}_n \text{ Add-Ons} = \text{Project}_n \text{ Sub}$

Where total PHA subsidy = equals sum of individual projects.

In the near –term, PHA that are able to demonstrate real project based cost data that can be substantiated will have their PEL replaced with this cost data, with mid-term goal (five years after effective date of this formula) of using actual verified cost data to distribute all operating fund appropriations by property.

#### **IX. Fungibility**

- Fungibility between Operating and Capital Funds: Fungibility between the Operating and Capital Funds will remain the same as provided by QHWRA.
- Fungibility between Projects:
  - Until PHAs transition to PBA, subsidy is fully fungible.
  - When PBA is established, individual properties will use their specific PEL as their baseline operating budget but excess cash flow is fully fungible. However, PHAs retain fungibility for emergencies.
  - No fungibility at the top of the Operating Statement

#### **X. Clarification of Project-Based**

HUD will clarify project-based accounting and project-based management in this rule.